

EXHIBIT H

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN**

In re Subpoena to MARY FANNING

Case No. 2:23-mc-00051-BHL

SMARTMATIC USA CORP., SMARTMATIC
HOLDING B.V., and SGO CORP., LIMITED,

Plaintiffs,

vs.

Case No. 22-cv-00098-WMW-
JFD

MICHAEL J. LINDELL and MY PILLOW,
INC.,

Defendants.

**DECLARATION OF JULIE M. LOFTUS IN SUPPORT OF SMARTMATIC'S
MOTION TO COMPEL DEPOSITION TESTIMONY OF MARY FANNING, MOTION
FOR SANCTIONS, AND OPPOSITION TO FANNING'S MOTION FOR
PROTECTIVE ORDER**

I, Julie M. Loftus, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am over the age of 18, I am competent to make this declaration, and I have personal knowledge of the facts stated herein. These facts are true to the best of my knowledge, information, and belief, and if called upon to testify as a witness, I could and would testify competently to them.

2. I am an associate at the law firm Benesch, Friedlander, Coplan & Aronoff, LLP, and I represent Plaintiffs Smartmatic USA Corp., Smartmatic International Holding B.V., and SGO Corporation Limited (“Smartmatic”) in the above-captioned action.

3. Attached as Exhibit 1 is a true and correct copy of Plaintiffs’ First Supplemental Complaint in *Smartmatic USA Corp., et al. v. Lindell, et al.*, No. 22-cv-00098-WMW-JFD (D. Minn) (the “Lindell Litigation”), dated April 7, 2023.

4. Attached as Exhibit 2 is a true and correct copy of Exhibit 1 to Plaintiffs’ First Supplemental Complaint, a transcript of the documentary *Absolute Proof*.

5. Attached as Exhibit 3 is Defendant Michael J. Lindell’s Supplemental Answers to Plaintiffs’ First Set of Interrogatories in the Lindell Litigation. Exhibit 3 includes only interrogatories and answers that are relevant to Smartmatic’s Motion to Compel Deposition Testimony of Mary Fanning, Motion For Sanctions, and Memorandum in Opposition to Fanning’s Motion for Protective Order (“Motion to Compel”) .

6. Attached as Exhibit 4 is a true and correct copy of Exhibit 4 to Plaintiffs’ First Supplemental Complaint, screenshots from the documentary *Scientific Proof*.

7. Attached as Exhibit 5 is Defendant Michael J. Lindell’s Second Supplemental Answers to Plaintiffs’ First Set of Interrogatories in the Lindell Litigation. Exhibit 5 includes only interrogatories and answers that are relevant to Smartmatic’s Motion to Compel.

8. Attached as Exhibit 6 is a true and correct copy of Defendant My Pillow, Inc.’s Second Supplemental Answer to Plaintiffs’ Interrogatory No. 6 in the Lindell Litigation.

9. Attached as Exhibit 7 is a true and correct copy of documents Bates Stamped DEF10364833 and DEF10364834, which were produced by Defendants in the Lindell Litigation.

10. Attached as Exhibit 8 is a true and correct copy of Exhibit 125 to Plaintiffs’ First Supplemental Complaint in the Lindell Litigation.

11. Attached as Exhibit 9 is a true and correct copy of Fanning Dep. Exs. 389–90.

12. Attached as Exhibit 10 is a true and correct copy of Fanning Dep. Ex. 393.

13. Attached as Exhibit 11 is a true and correct copy of Fanning Dep. Ex. 394.

14. Attached as Exhibit 12 is a true and correct copy of Fanning Dep. Ex. 395.

15. Attached as Exhibit 13 is a true and correct capture of publicly available tweets posted by the X (formerly known as “Twitter”) user @realMaryFanning (“The American Report”) from July 30, 2023 through August 27, 2023.

16. Attached as Exhibit 14 is a true and correct copy of Fanning Dep. Ex. 397.

17. Attached as Exhibit 15 is a true and correct copy of Fanning Dep. Ex. 398.

18. Attached as Exhibit 16 is a true and correct copy of Fanning Dep. Ex. 401.

19. Attached as Exhibit 17 is a true and correct copy of Fanning Dep. Ex. 402.

20. Attached as Exhibit 18 is a true and correct capture of publicly available tweets posted by the X user @realMaryFanning from August 28 through September 1, 2023 using PageVault software.

21. Attached as Exhibit 19 is a true and correct copy of the transcript of the August 29, 2023 deposition.

22. Mary Fanning was subpoenaed to sit for a deposition and produce documents on November 8, 2022. *See* Exhibit 9.

23. From June 2023 through July 26, 2023, Smartmatic's counsel and Fanning's attorney, Bill Mohrman, corresponded numerous times regarding scheduling Fanning's deposition.

24. Fanning's counsel confirmed, via email, that Fanning would sit for her deposition scheduled for August 4, 2023.

25. On August 1, 2023, Fanning's counsel emailed me and stated that Fanning could not attend her August 4 deposition because she had suffered a concussion. The same day, Fanning's counsel also called me and stated that Fanning had been struck by a swinging door that struck her with such force that she was lifted off her feet. I memorialized this conversation in a letter dated August 2, 2023. *See* Exhibit 11. In my letter, I asked Fanning to provide documentation of her alleged injuries.

26. On August 25, 2023, Fanning's counsel informed Smartmatic that Fanning would not attend the scheduled August 29, 2023 deposition. Fanning claimed that she could not be deposed due to continued use of a prescription medication and "lower back pain." Fanning's counsel sent me, via email, a one-sentence doctor's note referencing back pain, and a blurred photograph of a pill bottle. Fanning's counsel described these communications in a publicly-filed motion filed August 28, 2023 (*see* ECF No. 1).

27. On August 26, 2023, Smartmatic informed Fanning and her counsel that the purported "evidence" of her injuries that she provided was insufficient. Smartmatic explained that Fanning's claims were implausible and it highlighted her pattern of delay. Smartmatic pointed out that Fanning's alleged treating physician was located 60 miles away from Fanning's residence, while Fanning's lawyer had represented that she could not travel in a car for more than 10 minutes.

Smartmatic further explained that the use instructions on the pill bottle indicated Fanning would have stopped taking the pills several days prior to her representation that she was still medicated. Smartmatic's letter informed Fanning that the deposition would proceed on August 29, 2023.

28. On August 28, Fanning's counsel represented to me that he was experiencing a medical problem and could not travel to the deposition the next day. I responded that the deposition would go forward as scheduled. *See* Exhibit 17.

29. On August 29, Smartmatic opened Fanning's deposition in Lake Geneva, Wisconsin, as noticed. Neither Fanning nor her counsel appeared. *See* Exhibit 19.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.



Julie M. Loftus

Executed on September 5, 2023